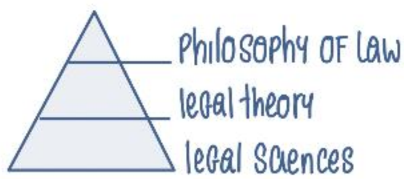
HANDOUT

GENERAL JURISPRUDENCE

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Part 1



Legal sciences (private law, criminal law, constitutional law): Each legal science provides a picture of a part of the legal system. These laws play different functions: Private law regulates relationships between private citizens, whereas administrative law regulates relationships between a private citizen and the government.

Legal theory: studies concepts and frameworks common to different legal systems. (ex. punishment, sovereignty, government...)

Philosophy of law: What is law? Where does law come from? What are the sources of law? What is the nature of law?

- Austin: General jurisprudence as *"principles, notions, distinctions which are common to systems of law in all advanced societies."*

- Hart: *"Little is to be gained from elaborating the traditional distinctions between the philosophy of law, jurisprudence, and legal sciences."*
- Green: *"General jurisprudence is the theory of law in general, identifying features of law whenever and wherever it exists… main subjects are the nature of law, nature between law & morality, and the demands law makes of its subjects."*
- Twining: *"Current view of Jurisprudence is narrow in largely being confined to state law viewed from a western perspective."*

Western canon of jurisprudence:

- Austin
- Hart
- Finnis
- Dworkin

Internal view of law: positivistic; law is valid if it has been properly enacted by the relevant legal procedures; the law is essentially a social fact and does not necessarily reflect morality

External view of law: natural law based; validity of law is dependent on higher moral standard; if a law contradicts natural law principles it is not a valid law

Questions about jurisprudence:

- Is state law the only relevant kind of ordering?
- Is all law secular?
- Is it possible to identify universal characteristics of legal phenomena?
- To what extent is law culture dependent?
- How should general jurisprudence be thought of in the current global situation?

- State law is central to our lives but intertwined with supranational & international legal orders
- This ordering is highly diversified and cannot be traced back to traditional black letter law
- Different legal traditions answer "what is law?" differently, casting doubt on the idea that law can be universally defined

- ***"General jurisprudence is the study of two or more legal orders." -Twining***
- **We need concepts that "travel well" across cultures**
- **There are forms of non-State law (religious law, customary law, international treaties, regional unions)**
- **Notion of exclusive sovereignty over a defined territory is challenged**
- **There exist different levels of legal ordering & legal relations**
- **We live in a globalized world**

- Analytical jurisprudence: legal concepts and reasoning, legal structures
- Normative jurisprudence: moral and political values
- Empirical jurisprudence: explanation of actual legal phenomena

- General jurisprudence exists to give a general understanding of law in our current global scenario

Legal positivism

- Built around assertion that discussion of law must be kept separate from what the law should be (is-ought gap)
- Social institutions can be studied in an objective way, free from ideology
- Thus an attempt to create a "scientific" foundation of law analogues to the hard sciences that were based only off "objective" observation of events (reducing the normative to the empirical)

Hart

- Continued separation of law and morality
- But criticized analyzing law in strictly empirical terms
- Said social sciences must be studied differently than the hard sciences
- Thus we must understand the meaning actions have to individuals & institutions

Austin

- Law as command theory: commands issued by sovereign backed by threat of sanction
- The sovereign as habitually obeyed by others but does not habitually obey anyone else

- The social fact that gives validity thus is the sanction for noncompliance
- These norms don't have basis in morality but social phenomena

Hart's criticisms of Austin

- In modern governments legal officials are subject to legal restraints
- There are other functions to legal systems than commands backed by threats
- Thus inability to distinguish pure power from accepted legal institutions
- Not all laws are commands of sovereign either; some are made by the people themselves such as customary law or constitutional rules
- People not merely in the habit of obeying authorities but have internalized reasons
- Theories which take into account these sociological explanations (the "why?") are better than those which don't
- Hart self describes his works as "essay in descriptive sociology"
- Difference from "feeling obliged" (gunman threats) and "having an obligation" (complex sociological reasons)
- In addition to rules that impose duties, there are also rules that confer powers (either to legal officials or delegated to citizens such as contracts and wills)
- **Secondary rules combat the three major shortcomings of primary rules: 1) <u>uncertainty</u> of the law, 2) <u>inefficiency</u> of the law, and 3) <u>static</u> *quality* of the law**
- Rule of adjudication empowers individuals to determine if on a particular occasion a rule has been broken; also governs election & procedure of judiciary; must be supplemented by rule of recognition; *"the rule which confers jurisdiction will also be a rule of recognition, identifying the primary rules through the judgments of the courts and these judgments will become a 'source' of law."*

Rule of recognition

- Can be written in an official text
- Can be criteria officials state they are following
- Can be determined after the fact by reference to conduct they have made
- Symbolizes basic tenant of legal positivism: there are conventional criteria agreed upon by legal officials as to what is and isn't part of the legal system
- Thus separates discussion of law from morality; and discussion of what law is and what law ought to be

Open texture

- Legislative rules cannot always be clearly applied to every circumstance

- In these gaps (open texture) judges must exercise their discretion to make new laws

Cicero on natural law

- Eternal and unchanging, valid for all nations and all time
- Impossible to abolish entirely
- Can be interpreted by individuals
- Those who disobey will suffer the worst penalties even if they avoid current state punishment

Aquinas on natural law

- Four kinds of law: eternal law, natural law, divine law, positive law
- Positive law is derived from natural law
- Sometimes this is direct (no murder)
- ***Sometimes leaves room for interpretation based off custom or policy (which side of the road to drive on)***
- A positive law is unjust when it isn't for the common good, the lawgiver exceeds their authority, or the law's burdens are imposed upon citizens unfairly
- No obligation to obey unjust positive laws

Natural law theory

- Classical writers implied it as inherent in the nature of things
- Early church writers said it was laid down by divine commands
- Distinction between power and validity (a corrupt state may punish someone even if its shown the supposed law was invalid under the state's own procedural requirements)
- "Unjust law is no law" can mean it is literally not law, or that its not law in "the fullest sense"
- For the latter, its controversial if this means it should not be obeyed (as this may undermine the entire legal system which may still be generally good)

Finnis on natural law

- Applied Aquinas' principles to sociology & analytical jurisprudence
- There exist basic goods which answer how we should live; these are not reducible to more basic principles

- These are intrinsic because they are good in their own sake; other “goods” such as medicine are so because they contribute to the basic goods
- Life, health, knowledge, play, aesthetic experience, friendship, practical reasonableness, & religion
- Self-evident because they cannot be derived from more fundamental principles & can be supported by observational data and arguments
- This however does not mean they will be immediately known or clear to everyone
- Moving from basic goods to moral choices is done through never acting against a basic good, and forming a rational plan for life
- Law effects the basic goods because they require social coordination among the people
- People only have an obligation to follow just laws

Dworkin’s anti-Positivism

- Along with rules, legal systems contain “principles”; most important are ***justice*** and ***fairness***
- These are moral propositions implied by acts such as judicial rulings, statutes, and constitutional provisions
- These principles have “weight” toward certain legal decisions and do not act in an “all or nothing” fashion
- There can and often are contrary principles on a single legal action
- Still positivist-like 7eparation between law & morality because judges can’t decide based off any moral principles, but **principles implied in past legal actions**
- **INTERPRETIVISM**: *“the law is whatever follows from a constructive interpretation of the institutional history of the legal system”*
- **Proof of these principles exists particularly in “landmark” cases where judges overrule the previous status quo because of the “real spirit” of the law**
- Also when judges have cited principles for creating exceptions, modifying, or overturning legal rules
- Because of numerous principles law can’t “run out”
- Judge chooses best “fit” of principles that make the law “the best it can be”
- Thus for almost all legal questions there exists unique right answers
- **The thesis that there exists a right answer as a matter of law that the judge must discover. He opposes the notion that judges have discretion in such difficult cases.**

Dworkin’s interpretive approach

- ***Legal claims are interpretive judgements which combine backward and forward looking thinking***
- Judges take into account past principles along with their view of the "best fit", creating an ever changing and unfolding narrative
- Thus the purpose of law is to constrain or justify the expression of government power
- Judges should have "integrity" by simplifying the law and keeping it coherent while upholding fairness & justice in hard cases

Dworkin's "right answer" thesis

- Even in difficult cases, judges & lawyers talk as if there's a single right answer to be found
- There exist "right answers" for the simple reason that judges are forced to reach a result in the questions placed before them, and some of these results are better than others

Radbruch's formula

"Positive law, secured by legislation & power takes precedence even when its content is unjust and fails to benefit the people. However when the conflict between statute & justice reaches an intolerable degree, the statute, as flawed law, must yield to justice."

Twining's criticisms of "western canon of jurisprudence"

- Only pays attention to domestic state law
- Is "participants oriented"
- Does not focus on different levels of ordering & legal relations which characterizes global law

Case Study 1: The Micronesian Constitution

Micronesia consists of hundreds of small islands across a vast expanse of the tropical equatorial region in the Western Pacific Ocean, stretching nearly 2,000 miles from the Philippines toward Hawaii. Beginning in the late-nineteenth century, much of the region was successively ruled by foreign powers: Spain, Germany, Japan, and the United States. In 1975 the Micronesia Constitutional Convention took place as a long-awaited exercise of collective self-rule; it was the first concrete action the road to political independence.

The discussion within the Convention was mainly about the political and institutional design of the new independent political entity, land ownership, role of the traditional leaders in the government. Furthermore, a battle emerged in connection with two intersecting issues: the

impact on custom and tradition of the proposed bill of rights (and the constitution generally), and how judges should interpret the constitution and laws. The desire to preserve custom and tradition was a widely shared concern, as well as the protection of fundamental rights trough the judiciary. After a long discussion, the Convention passed Article IV and Article V of the new constitution:

Article IV

Section 1. No law may deny or impair freedom of expression, peaceable assembly, association, or petition.

Section 2. No law may be passed respecting an establishment of religion or impairing the free exercise of religion, except that assistance may be provided to parochial schools for non-religious purposes.

Section 3. A person may not be deprived of life, liberty, or property without due process of law, or be denied the equal protection of the laws.

Section 4. Equal protection of the laws may not be denied or impaired on account of sex, race, ancestry, national origin, language, or social status.

Section 6. The defendant in a criminal case has a right to a speedy public trial, to be informed of the nature of the accusation, to have counsel for his defense, to be confronted with the witnesses against him, and to compel attendance of witnesses in his behalf.(...)

Section 8. Excessive bail may not be required, excessive fines imposed, or cruel and unusual punishments inflicted. (...)

Section 9. Capital punishment is prohibited

Section 10. Slavery and involuntary servitude are prohibited except to punish crime.

Article V: Traditional Rights

Section 2. The traditions of the people of the Federated States of Micronesia may be protected by statute. If challenged as violative of Article IV, protection of Micronesian tradition shall be considered a compelling social purpose warranting such governmental action.

Article XI: Judicial Power

Section 11: Court decisions shall be consistent with this Constitution, Micronesian customs and traditions, and the social and geographical configuration of Micronesia. In rendering a decision a court shall consult and apply sources of the Federated States of Micronesia.

The state laws and legal system were transplanted in Micronesia from the United States, including nearly all the lawyers and high court judges working within the system, who were occupied mainly with government matters and commercial activities, as well as occasional major crimes. In daily social intercourse in the villages people largely followed customary law administered by chiefs, including matters of property, marriage and divorce, and personal injuries, often on terms not reflected in state law. The populace had little knowledge about state law, which was written in American legalese they did not understand, and on the outer islands the state legal system had virtually no presence. The state and national constitutions officially recognized custom and tradition but had limited interaction with it. A de facto bifurcation (albeit not sharp or fixed) existed between customary law followed within the community and a state legal system mainly occupied with government affairs and major commercial transactions. The arrangement worked cohesively for the most part, each dealing with its own matters, though occasions arose when the two systems came into direct clash.

The Rape Case

In two separate incidents a month apart, a teenage boy raped a girl. Thereafter, the community of each of the victims met in a customary gathering to discuss what should be done in response. The traditional leaders at these gatherings decided that the boys must be punished— whereupon the victim's relatives and others in the community severely beat the boys. One boy had a bloodied face and broken arm; the other was beaten unconscious and hospitalized for five days (the latter received a more severe punishment because his victim was from a higher caste, which magnifies the offense).

A traditional reconciliation ceremony held thereafter resolved the matter within the community. Following these events, a national prosecutor brought rape charges against the two boys. They admitted their guilt and proceeded to sentencing. State legal officials ordinarily did not file criminal charges when customary punishments were administered because that resolved the matter within the community, but charges were brought in this instance because it was a serious crime under the criminal code that required prosecution.

The family of the victims took the side of the defendants in the state proceedings, asserting that the boys had already been appropriately punished. The attorney for a defendant argued that "as a matter of customary law, the beating may have restored [him] fully to the community." Judge Richard Benson sentenced the boys to two years in jail. He refused to consider the customary punishment because he did not want to send the message that people could "take the law into their own hands. "This language suggests they were acting as vigilantes, not people carrying out legitimate customary punishment on behalf of the community.

On appeal, the Supreme Court ruled that owing to the constitutional clause recognizing custom and tradition, the customary punishment should be considered as a mitigating factor to reduce the punishment.

More telling than the outcome is how Judge Edward King (an American expatriate) construed events. Judge King skeptically and disapprovingly described the conduct of the villagers: “Both defendants suffered substantial, even brutal, beatings perpetrated by people who saw themselves as somehow representing the victims and their communities.” He asserted the monist view that state law is supreme and exclusive: “In adopting the Declaration of Rights as part of the Constitution of the Federated States of Micronesia and therefore the supreme law of the land, the people of Micronesia subscribed to various principles which place upon the judiciary the obligation, among others, to assure that arrests are based upon probable cause, the determinations are arrived at fairly, and that punishments for wrongdoing are proportionate to the crime and meet prescribed standards”. Judge King condemned the policy of state legal officials of not bringing charges after customary punishment and reconciliation had taken place: “This practice of course amounts to a substitution of the customary punishment in place of the judicial proceedings and punishment contemplated by the Constitution and state statutes.

Under the policy of the Yap attorney general’s office, beating is no longer just a customary punishment, but also serves as the entire official state trial and punishment for that specific offense”. State law is the only form of law in Micronesia (in his mind), so therefore, Judge King reasoned, if state legal officials recognize customary punishments by the community, in effect this constitutes the state’s legal actions.

From the perspective of the community, including the victims and defendants, the punishment was an appropriate customary law response that directly resolved the situation independent of the state legal system. Yapese customary law did not owe its existence to the fact that a clause was included in the written constitution recognizing custom and tradition (drafted by a staff of American lawyers), but rather because as far back as they could remember they carried out their daily social intercourse through this law.

Questions

1) Was the State judge’s decision correct?
2) What are the sources of legal obligation in Micronesia?
3) What is the nature of law in Micronesia?
4) Can the Micronesians’ understanding of law be generalized?
5) If you had been the judge, how would you have decided the case?

Case study 2: What is Law? The Border Wall Guards Case

After the end of World War II, the city of Berlin was divided into four occupied zones, each controlled by one of the four occupying allied powers (USA, UK, France, Soviet Union). In 1961, in response to the flood of departures to the West, the G.D.R. government built the "Berlin Wall" separating East Berlin form West Berlin.

As a result, the total number of refugees from the East dropped to under 5,000 per year. However, more significant is the number of people who were killed trying to escape from the G.D.R. During the twenty-eight years that the Berlin Wall sealed the border between East Germany and the rest of the world, almost 600 people were killed trying to escape from the East to the West.

Aper reunification, there was a public outcry to bring to justice those who were responsible for crimes that occurred under the G.D.R. regime. In June 1991, the Berlin prosecutor's office indicted four former border guards who were responsible for shooting and killing the last escapees over the Wall.

Questions:
Was the decision of the Berlin Border Wall Guards case legally justified?
Was the decision acceptable from a political and moral point of view?
Which conception of law was implicitly adopted and defended by the parties in the trial?

Legal Reasoning of the Criminal Court

- Treaty on German Reunification: *"The law of the German Democratic Republic valid at the time of signing of this Treaty... shall remain in force in so far as it is compatible with the Basic Law."*
- The wall guards obeyed an order as they shot the fugitives.
- § 27 Grenzgesezt (GDR 1982): *"The use of firearms is justified to prevent the imminent execution of an offence which, under the circumstances, appears to be a crime."*

  (It is also justified for the apprehension of persons who are urgently suspected of a crime.)

- Although shooting to kill was formally legal under GDR law, it infringed on *"basic human rights and a higher moral law."*
- Radbruch's Formula: *"The conflict between justice and legal certainty may well be resolved in this way: The positive law, secured by legislation and power, takes*

precedence even when its content is unjust and fails to benefit the people, unless the conflict between statute and justice reaches such an intolerable degree that the statute, as 'flawed law', must yield to justice".

- § 27 Grenzgesetz was not law.

Legal Reasoning of the Defense

- It can be assumed that the guards' conduct was immoral, but this does not make it unlawful.
- The wall guards obeyed an order issued by a superior.
- § 27(2) Grenzgesezt was valid law and legally jus7fies the guards' conduct.
- The conviction of the guards violated the principle of non-retroactivity of criminal laws stated by the German Basic Law.
- • §103 GG: An act may be punished only if it was defined by a law as a criminal offence before the act was committed

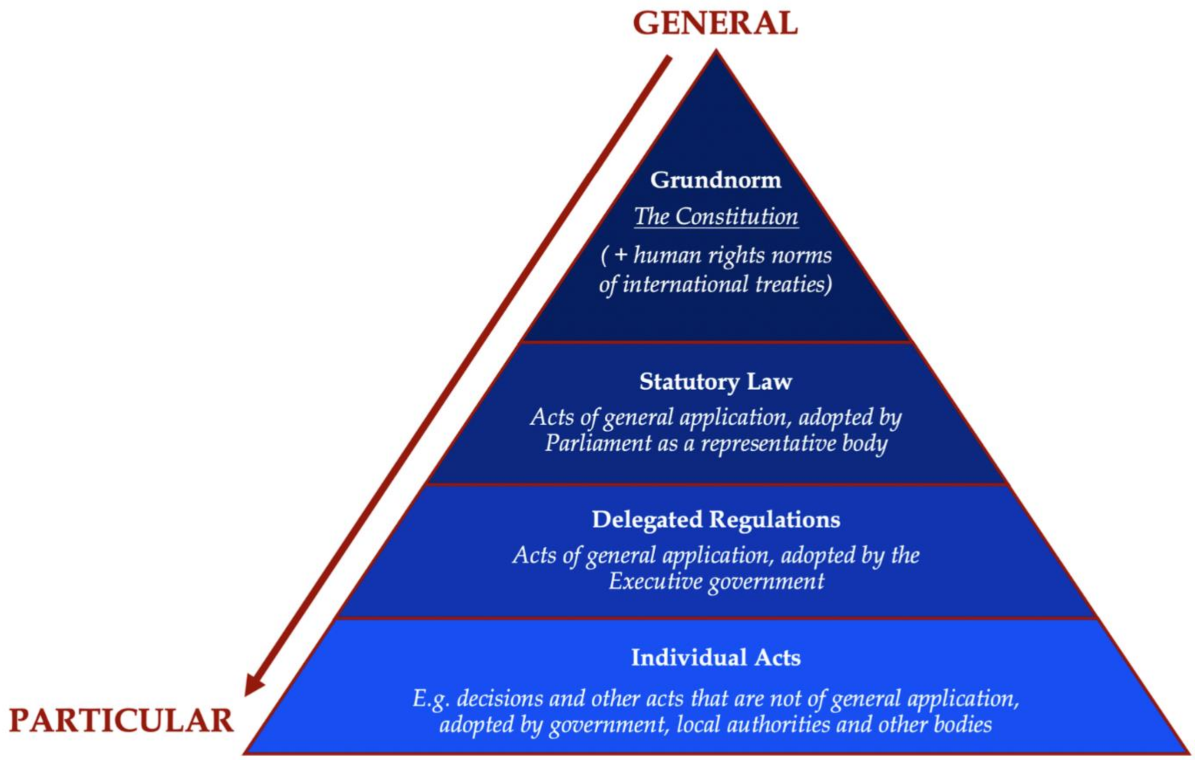
Legal Reasoning of the Federal Constitutional Court

There are universal moral standards which are incorporated into the German constitution (e.g. right to life, liberty, dignity, non-retroactivity of criminal laws, etc.).

- If a judicial decision violates these principles, it is unlawful.
- The conviction of the wall guards did not violate the constitutional principle of non-retroactivity.
- §103 GG is meant to protect the values of a constitutional democracy under the rule of law, but the GDR was a totalitarian state whose laws violated fundamental human rights.
- §103 GG cannot be used to preserve the validity of a statute (§27 Grenzgesetz) which was enacted by a totalitarian regime and was incompatible with other fundamental constitutional rights.
- Sentence imposed to the guards is constitutionally legitimate.

The structure of state law

The Structure of State Law (2)



Sources of positive law

- Written constitutions
- Primary legislation (statutes)
- Secondary legislation (regulations enacted by executive branch)
- Common law precedents (in applicable jurisdictions)
- International treaties
- European law
- Customary law

Basic characteristics of state law

- Morality comes from our beliefs of how we should act

- Authority of law comes from institutions
- Enforcement of law comes from legal officials
- Union of primary & secondary rules

Secondary rules

- Rule of change: how rules can be introduced, removed, & modified
- **Rule of recognition:** identifies which rules are valid legal rules
- **Rule of adjudication:** who & how its determined a rule has been broken

Minimum requirements for a legal system

- Primary rules must be generally obeyed
- Must be enforced by legal officials
- These legal officials must observe secondary rules as standard for behavior

Legal system

- Ordered sets of legal norms & institutions
- Has sovereignty
- Has separation of powers
- Associated with nation states

Sovereignty

"The most high, absolute and perpetual power over all citizens and subjects in a state."

- Internal sovereignty: sovereign institutions within a state have pure power over said citizens (incontestable)
- External sovereignty: heads of state are entities which can engage with other legal systems on the international stage (contestable)

Separation of powers

- Executive: implements & enforces the law
- Legislative: creates the law
- Judiciary: interprets & applies the law

(In federative states this separation of power manifests at both the national & regional levels.)

Division of judiciary levels

- Courts of first instance (specialized, ie. Criminal courts)
- Appellate courts
- High courts (Cassation courts & supreme courts)
- Constitutional courts (can only review questions of constitutionality)
- Administrative courts (hears disputes about administrative decisions)

Features of state law

- Based on collective national identity
- Claims authority over specific territory
- Stable, hierarchical, organized
- Division of labor in making/enforcing/mediating law

Legal globalization

- Decline of state authority on international stage
- Denationalization of state institutions
- Trade, migration, crime etc. that is regulated by law acquires a more global scope
- Legal regulation becomes multi-level (joint decision making; continuity between legal orders)

"There is no decline, no retreat, no crisis of the state. There is only a process of reconfiguration & restructuring which is a part of the state's dynamics. Because they must share power, states interact in a global network. Hierarchies are replaced with horizontal interactions. Command & control is replaced by negotiation."

State reaction to globalization

- Public law & private law merge
- Internal fragmentation (multiple legal orders exist within the state)
- Joint decision-making
- Interdependence of state & non-state actors

Paradoxes

- Globalization supports existence of states
- Global institutions mimic national governments

Challenging questions for general jurisprudence

- **Legal positivism:** what are the facts of the foundation of law in the global scenario?
- **Natural law theory:** are there fundamental moral standards underpinning the world?
- **New constitutionalism:** do the frameworks & principles of constitutional democracies have a global dimension?

The globalization of law (Shapiro)

- Uniform contract law as private corporations making law
- Corporations as deal makers (horizontal negotiation)
- Legal professions become more commercial & corporate
- Increase in size of executive bureaucracies
- Increase in judicial review
- Increasing regulation of private transactions (consumer protection, product standards)
- Increase in number of lawsuits

Legal globalization

- State authority reconfigured
- Characterized by interaction & interdependence of legal orders

Global law

- Multiple levels of legal ordering
- Legal relations are important on a sub-Global level

In addition to the standard picture of state law (primary & secondary legislation, etc.), there exists:

- International law
- Supranational law
- Transnational law
- European law
- Customary law
- Local non-state regulations

"Global law brings up important questions about the adequacy of our conceptional systems for analyzing & interpreting legal actions across jurisdictions & cultures." -Twining

- Linguistic problems: ambiguity & vagueness of legal terms
- Conceptual problems: contested concepts (law, justice, rights)

Analytical jurisprudence

- Linguistic analysis of legal concepts
- Explanation of the structure of legal systems
- Description of forms of legal reasoning
- Discourse about law in general
- Concerned with all forms & levels of legal regulation

Objections to “cultural relativism”

- Societies do not exist in isolation
- Human activity & legal cultures are strongly interconnected
- Convergence of legal regulations (functionalism)
- Adoption of foreign legal principles (transplant)

Concepts that “travel well” in the global law scenario

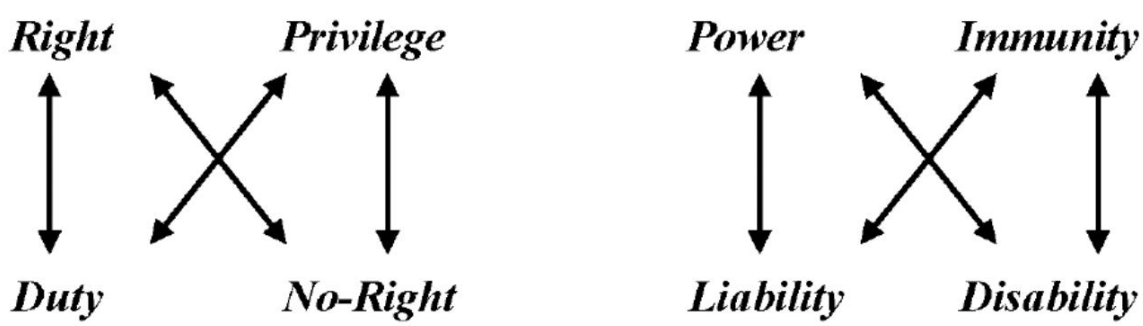
- Inhuman & degrading treatment
- Torture

Normativity

- Legal systems establish norms (rules) that are binding on individuals
- Not just descriptive but prescriptive
- Legal norms have binding nature; individuals who violate norms incur sanctions
- Legal systems have hierarchy of norms, with higher levels (constitution) taking precedence over lower levels (executive regulation)
- Subject to interpretation & application by legal officials
- Normativity of law depends on state’s willingness to enforce norms in event of non-compliance

Hohfeldian legal relations

- Power-right (or claim-right) – "Can do"
- Liability (or duty) – "Must do"
- Privilege (or immunity/liberty/freedom) – "May do"
- Disability (or no-right) – "Can't do"



right	is the opposite of	no-right
correlates with		correlates with
duty	is the opposite of	privilege

power	is the opposite of	disability
correlates with		correlates with
liability	is the opposite of	immunity

Hohfeld's analysis is majorly based on Salmond's earlier system. According to Salmond, there are three categories of rights:

1) Rights in the strict sense, which are defined as interests protected by the law by imposing its duties with respect to the rights upon other persons

2) Liberties are defined as "interests of unrestrained activity"

3) Powers "when the law actively assists me in making my will effective".

Privileges and no-rights

The term liberty is preferred by most future jurists over the phrase privilege. These two terms occupy the same structural position in Hohfeld's theory, notwithstanding Hohfeld's preference for the term privilege. Privileges are permissions to act in each way without being held liable for the harm caused to others who, at the same time, are unable to ask the authorities to intervene.

"To the degree that the defendants have privileges, the plaintiffs have no rights", There can't be a conflict between rights (claims) and privilege. The correlation of this legal relationship demonstrates that the person against whom liberty is asserted has no right to the conduct to which liberty pertains. This does not, however, rule out the possibility of him interfering with the action.

Hohfeld agreed that under legal systems, liberties that are not accompanied by responsibilities imposed on others to avoid interference with legal action exist, and that there are open strong political reasons for doing so. When someone is granted legal liberty, he relieves legislators of the burden of imposing a duty on others. When deciding whether to apply the above requirements in a specific circumstance, a rational legislator may take advantage of political concerns.

For example, the fundamental rights mentioned in Part III of the Indian Constitution, are in fact the 'privileges' mentioned by Hohfeld as they provide that the State has a correlative 'no-right' to interfere in the exercise of these freedoms.
Powers and liabilities

The first two pairs of legal positions (right/duty and liberty/no-right) are first-order relations, while the following two pairs (power/liability and immunity/disability) are second-order relations. Some first-order relations are directly applied to human behavior and social interactions without the use of any second-order relations.

All second order relations, on the other hand, are applied directly to human entitlements and only indirectly to human behavior and social interactions. According to Hohfeld, a jural relationship can be modified in two ways: by facts that are not under the volitional control of one or more people, or by facts that are under the volitional control of human beings. He defined powers in terms of the second group of circumstances, in which a person with the dominant volitional control has the legal authority to change jural relations in a specific way. This relationship is held between two people with respect to certain actions or conditions of events, like other jural interactions. Hohfeld gave several instances of legal powers, including property-related powers (property abandonment and ability to transfer property), contractual obligation-creating capabilities, and the establishment of an agency relationship. Susceptibility to someone exercising power is defined as liability. Deference to a ship in a person's entitlement isn't always unpleasant. A promisee, like an inheritor, may profit from an entitlement conferred by a promisor.

When it comes to liability, Hohfeld brought up the issue of those who work in 'public callings' like innkeepers. Rather than the common perception that innkeepers have a duty to all other parties, Hohfeld stressed that an innkeeper has liability and that travelers have a correlative authority. As a result, travelers have the legal authority to bind an innkeeper to accept them as guests by submitting an acceptable tender. If jurists conflated Hohfeldian powers with rights, there would be a lot of uproars. Simmonds gives an example of how power can be linked with a duty not to exercise it, such as when a nonowner has the authority to transfer title to a bona fide purchaser but will commit an infraction while doing so. If we use the word 'right' to define the power, we must declare that the non-owner has the right to sell the property.

Immunity and disability

Immunity refers to the state of not being able to have one's rights altered by another. A lack of power to change legal entitlements is defined as a disability. The basic difference between powers and immunities is the same as the general contrast between rights and privileges. A right is an affirmative claim against someone else, whereas a privilege is someone's exemption from someone else's right claim. Similarly, power is someone's affirmative control over a specific jural relation about another, whereas immunity is someone's independence from another's legal power or control over some jural relations.

For example, if A enjoys immunity against B, B is limited in his or her ability to exercise powers relating to the immunity's covered entitlements. Immunity rights are a common occurrence in constitutional texts. As a result, if the people are guaranteed freedom of speech by the Constitution, the legislature cannot wield any power in this regard. While the legislature is disabled, the people have immunity rights to freedom of speech.

Claim-right: A claim-right is a legal right that one person has against another, implying that the other person has a corresponding duty. For instance, if Person A has a claim-right to receive a payment from Person B, then Person B has a duty to make that payment.

Duty: A duty is the corresponding obligation that arises when someone else has a claim-right. If Person A has a claim-right to receive a payment from Person B, then Person B has a duty to make that payment.

Privilege: A privilege is a legal right that allows someone to act in a certain way without facing legal consequences. It is the opposite of a duty. For instance, if a person has the privilege to use a common property, others do not have a duty to prevent that use.

No-right: No-right refers to the absence of a claim or privilege that another person possesses. It is the correlative of privilege and the opposite of claim. If someone has a no-right, it means that they do not possess a particular claim or privilege that another party has. For instance, if a person is not entitled to use a communal resource, it implies that others have the privilege to prevent that person from using it.

Power: A power is the legal authority or capacity to create, modify, or extinguish legal relations or rights. It is the ability to alter the legal rights and duties of others. For example, the power to make a will allows an individual to determine the distribution of their property after death.

Liability: Liability is the legal responsibility or obligation to bear the consequences or suffer the legal repercussions of certain actions or inactions. It is the correlative of the power and the opposite of immunity. If someone has a liability, it means that others have the power to hold that person accountable or to take legal action against them. For example, if a person causes harm to another through negligence, they may be liable for damages or compensation.

Immunity: Immunity refers to the protection or exemption from a legal duty or liability that others may have. For instance, if a person is immune from prosecution for a certain act, it means that others do not have the power to bring legal action against that person for that particular act.

Disability: Disability is the absence of power or the inability to carry out a certain action. It implies the lack of capacity to create, modify, or extinguish legal relations or rights. For example, a minor may have a disability in certain legal contexts, as they may lack the capacity to enter into contracts.

Case Study 3 The Mabo Case: Sovereignty, land property, and indigenous rights

The Murray Islands lie in the Torres Strait, between Australia and New Guinea. The people who were in occupation of these Islands for generations before first European contact and who have continued to occupy those Islands to the present day are known as the Meriam people. They are a Melanesian people (perhaps an integration of differing groups) who probably came to the Murray Islands from Papua New Guinea.

In August 1879, the Murray Islands were incorporated into the state of Queensland by an act of annexation approved by the Australian Federal Parliament and the British Crown. Because of this act, the Meriam people were no longer entitled without the consent of the Crown to continue to occupy the land they had occupied for centuries past.

What was the legal basis for the annexation of the Murray Islands?

According to English common law, as stated by Blackstone, English law would become the law of a country outside England either upon first settlement by English colonists of a "desert uninhabited “country (res nullius) or by the exercise of the Sovereign’s legislative power over a conquered or ceded country. Blackstone did not contemplate other ways by which sovereignty might be acquired. In the case of a conquered country, the general rule was that the laws of the country continued after the conquest until those laws were altered by the conqueror. When "desert uninhabited countries" we recolonized by English settlers, however, they brought with them "so much of the English law as (was)applicable to their own situation and the condition of an infant colony.

“When British colonists went out to other inhabited parts of the world and settled there under the protection of the forces of the Crown, it was necessary for the common law to prescribe a doctrine relating to the law to be applied in such colonies. If the indigenous people of a settled colony were taken to be without laws, without a sovereign and primitive in their social organization, then the sovereignty of a territory could be acquired under the enlarged notion of terra nullius. In other words, for the purposes of the municipal law that territory (though inhabited) could be treated as a "desert uninhabited" country.
As the indigenous inhabitants of a settled colony were regarded as "low in the scale of social organization", they and their occupancy of colonial land were ignored in considering the title to land in a settled colony. Ignoring those rights and interests, the Crown's sovereignty over a territory which had been acquired under the enlarged notion of terra nullius was equated

with Crown ownership of the lands therein, because, as Stephen C.J. said, there was "no other proprietor of such lands.

In 1982 a group of Meriam people brought an action against the State of Queensland and the Commonwealth of Australia in the High Court. With Eddie Koiki Mabo named as the first plaintiff, the case became known as the Mabo Case.

The first question the High Court was asked to answer was whether the Meriam people did have traditional rights and interests in the land of the Murray Islands and, if so, whether Australian law would protect those rights and interests. If native title is recognized, are Indigenous people entitled to compensation if their land is taken away?

Starting from that, the Mabo Case challenged the existing Australian legal system from two perspectives:

- On the assumption that Aboriginal and Torres Strait Islander peoples had no organization and concept of land ownership before the arrival of British colonizers in 1788 (the doctrine of terra nullius).
- That sovereignty delivered complete ownership of all land in the new Colony to the Crown, abolishing any existing rights that may have existed previously.

After the proceedings commenced the Queensland Government passed the Queensland Coast Islands Declaratory Act in 1985. This Act purported to extinguish whatever rights and interests the Meriam people might have had under their traditional law. It also purported to extinguish traditional rights retrospectively (with effect from 1879 when Queensland annexed the islands) and without compensation. In the case Mabo v Queensland (1), the Murray Islanders argued, among other things, that the 1985 Queensland Act denied them equality before the law and the enjoyment of their right to own property and arbitrarily deprived them of their property. These are human rights protected by article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (RDA, 1975). By a majority of 4-3, the High Court held that the Queensland Coast Islands Declaratory Act was invalid because it was inconsistent with the RDA. It discriminated against the Meriam people by purporting to extinguish any rights they might have in their land.

Afterwards, in Mabo v Queensland (2), the High Court held by a majority of 6-1 that the Meriam people were entitled, as against the whole world, to the possession, use, occupation and enjoyment of (most of) the land of the Murray Islands.

The evidence presented the people of Mer successfully proved that Meriam custom and laws are fundamental to their traditional system of ownership and underpin their traditional rights and obligations in relation to land. As a matter of fact, indigenous peoples had lived in Australia and Torres Strait Islands for thousands of years and enjoyed rights to their land according to their own laws and customs. Based on the evidence provided by the plaintiff, the six judges in the majority rejected the traditional doctrine that Australia was terra nullius ('land belonging to no-one') at the time of European settlement.

Rather the majority found that the common law of Australia recognizes a form of native title to land. Pre-existing rights and interests in land survived colonization and still survives today:
(a) where the people have maintained their connection with the land; and
(b) where their title has not been extinguished by legislation or any action of the executive arm of the government inconsistent with that title.

Neither the establishment of the colonies nor Queensland's 1879 annexation of the Murray Islands extinguished the Meriam people's native title. However, native title could still be readily extinguished by government actions inconsistent with respect for native title and, before 1975, there was no right to compensation. The relevance of the RDA is that it requires fair and just compensation to be paid for loss of native title after 1975. Failure to pay compensation would be racially discriminatory because other land holders are entitled to compensation.

The decision in Mabo contained both good and bad news regarding Indigenous rights. For the first-time since European colonization, the High Court conceded what Aboriginal and Torres Strait Islander peoples have always known. The decision recognized the existence of native title that had,3as its source, traditional connection with and "ownership" of the land. This was an important symbolic moral victory for Aboriginal and Torres Strait Islander people.

It could also have been a moral victory for non-Aboriginal Australia if the Commonwealth government had chosen to accept the spirit as well as the letter of the law by acknowledging and protecting native title instead of seeking to minimize its extent. The bad news of the Mabo decision for Aboriginal and Torres Strait Islander people was that it accepted that their sovereignty had been lost at colonization, and therefore past removal and extinguishment of native title by grants of freehold lands was legally justified. The High Court found that past extinguishments were valid. Therefore, compensation was not required to be paid. For 200 years, the false belief in terra nullius served as a way of avoiding the recognition of, or responsibility for, land dispossession and expropriation.

Questions:

If we consider the Mabo case from the point of view of legal civilizations, families, cultures, and traditions…

1) What relevant aspects of the case are highlighted by these theories?
2) To what extent do these theories help to understand the case?

Problems with mapping law

- Which units should be mapped?
- What level of detail is appropriate?
- What basic units should be included?

Legal orders/legal regimes

- No precise boundaries
- Mutual interaction (inter-legality)
- Multiple levels of normativity
- Do not exist in a single vertical hierarchy
- Multiple legal orders co-exist
- Dynamic horizontal & vertical relationships

"A legal system or framework of rules governing some physical territory that is rooted in at least some form of law."

Levels of law

- **Global** (humanitarian law, natural law)
- **International** (relations between states)

- **Regional** (EU, Arab League)
- **Transnational** (Islamic, *transnational arbitration*, lex mercatoria)
- **Inter-communal** (normative orders governing relations between different communities)
- **State**
- **Sub-State** (executive regulation, municipal codes)
- **Non-State** (customary law, tradition, or illegal orders)

Classification of legal orders

- Legal families
- Legal traditions
- Legal cultures
- Legal civilizations

Legal families

- Different styles of thought which depend on:
- History
- Legal reasoning
- Legal institutions
- Ideologies
- Romanistic, Germanic, Nordic, Islamic, Socialist, etc.

Legal civilizations

- "Social experience over time"
- Deep structure
- Continuation of events
- Episodes
- British Commonwealth, Eastern Europe, Islamic, Black Africa, North America, Western Europe

Legal cultures

- Ideas
- Beliefs
- Practices
- Traditional ideas
- Symbols

Legal traditions

- Communication of information over time
- Memory, communication, continuity
- Contribute sense of identity to society
- Justify institutions
- Talmudic, Islamic, Common Law, Hindu, Civil Law, Asian, Customary Law

Under the Hartian Model a law exists only if

- It meets criteria of rule of recognition
- Legal system has primary & secondary rules
- Legal system is generally effective
- Laws are not necessarily connected with morality

Tamanaha's mirror theory

- Law is an expression of society
- Law reflects the social, political, & economic principles of its time
- Law is inseparable from the interests & goals underpinning these
- Law reflects the ideals of its legal culture

"Legal systems do not float in a void free of time, space, & social context. They necessarily reflect what is happening in their societies. In the long run, they assume the shape of these societies."

"Every legal system stands closely to the ideals & aims of its society. Law reflects the social, political, and economic reality of its time."

Tamanaha's social order theory

- Law is essential to social order
- It maintains social order by establishing & enforcing rules of social intercourse and by resolving disputes

"Where there is no law there can be no order, since order is but another name for conformity to rule."

Evolutionary myth

- Serves to legitimate law by:
- Implying positive law as a continuity of customs
- Claiming positive law as necessary to survival of society

Tamanaha's Core Concept of Law

- The "standard picture" of law is too narrow for a general jurisprudence
- General jurisprudence must identify core features of *all* legal phenomena
- Extends social facts thesis
- *Claims no function performed by all legal orders or a single law*
- Secondary rules not necessary
- *No necessary connection between law & state*
- Law is not necessarily normative (action-guiding)
- Rule of recognition may include all social actors

"Law is whatever people identify & treat through their social practices as 'law'."

Deflationism about law

- All that can be significantly said about the nature of law is exhausted by the role of the word 'law' in our talks
- This role is neither metaphysically substantive, nor explanatory
- The properties expressed by the term 'law' do not have a substantive nature that can be generalized

Criticisms to Tamanaha's deflationism

- How can we identify something as 'law' before we know what counts as law?
- How to distinguish law from other social phenomena?
- If legal phenomena don't have similar properties how can they be considered the same concept?
- Different legal orders cannot be compared on a common ground

Social habits vs social rules: Hart's picture of social rules

- Most members of group conform to rule
- If asked to justify this, they say they are following a rule
- Members of group refer to rule to exert conformity on others

Twining's reply to Tamanaha

- Tamanaha doesn't distinguish between the ways law operates in society (no definition of social order)
- Tamanaha's approach makes law indistinguishable from other social phenomena
- Proposes bringing weak senses of norm and institution into social practice to distinguish law from other social phenomena
- In global scenario law can still be tool to maintain social order by guiding behavior (normative)
- Concept of law can be a flexible orienting concept to identify family resemblances

Llewellyn's Law Jobs Theory

- All people are members of social groups
- To survive & flourish these groups need certain jobs to be done:
- Adjustment of trouble cases

- Preventing certain conduct
- Appointment of authority
- Punishments & rewards
- Legal doctrine

(These are the reasons that explain & justify existence of law.)

Twining on law from a global perspective: *"Law is an institutionalized social practice that is oriented to ordering relations between subjects at one or more levels of relation and ordering."*

Transnational legal pluralism (legal phenomena that extends beyond the bounds of nation-states)

- Internal legal pluralism
- Constitutional legal pluralism
- Global legal pluralism

Internal legal pluralism

- Ex: United States
- Forum shopping
- Dual sovereignty
- No clear allocation of powers

"Law in the United States consists of separate bodies of municipal laws & courts, plus federal laws & courts, plus specialized administrative law and courts, operating against a shared background of common law tradition."

"The United States are not fully hierarchically organized, internally consistent, and unified."

Constitutional legal pluralism

- Ex: European Union

- State-like institutional structure
- EU law competence depends on member states
- EU law has autonomous principles
- Multiple layers of EU law
- Negotiated normative authority of EU courts

“The constitutional order of the EU co-exists with the constitutional orders of its member states. Theres no established legal hierarchy to resolve conflicting claims of legal supremacy, or who’s court has the final say.”

“The point is that ‘state’ is an abstraction. ‘Sovereignty’ has no inherent content, but is filled at any given time by the politics & power at hand. The concepts of state & sovereignty distort our perception of legal arrangements that can more accurately be described without them.”

Global legal pluralism

- Common themes: managing competing jurisdictions, conflict of laws, how non-state regulatory orders complement official law
- International law organizations (UN, WHO, International Court of Justice)
- Transnational economic organizations (IMF, World Bank, Lex Mercatoria)
- Non-state regulation setting bodies
- Soft law arrangements (Corporate codes of conduct, UNIDROIT Principles of International Commercial Contracts)

Approaches to mapping global pluralism

- Descriptive
- Conceptual
- Normative

“So what?”

- *“Fragmentation and multiplicity of law have always been present in human history.”*

“Then what?”

- *"The value of terming the current legal reality as 'legal pluralism' is that it emphasizes the coexisting of public & private regulatory regimes and their possible interactions. This can be complimentary/supportive, contradictory/antagonistic, competing or cooperating."*

Normative jurisprudence:

- Concerned with prescriptive aspects of law
- Deals more with the ethical/political/moral aspects of law
- What should the law be?
- What principles should guide judicial decision making?
- What is the goal or purpose of law?
- What moral or political theories provide a foundation for law?
- What is the proper function of law?
- What acts should be punished?
- What is justice?

Part 2 – Constitutional Democracy

2.1 Democracy

- Equality and freedom are the fundamental principles of democracy; however not necessarily compatible.

Epistocracy

- Objection to democracy raised by Plato because democracy undermines expertise required to rule effectively.
- Instead he proposed "Epistocracy", ie. Rule by experts
- We saw this some during the Covid pandemic

Conceptions of democracy **(what is democracy?)**

- **Formal**: rules of the game, the procedures that shape collective decision-making; about the 'who' and 'how'; says democracy must be majoritarian

- **Substantive:** goes beyond 'who' and 'how'; requires the protection of basic rights ('what' cannot be decided')

Types of democracy (how to do democracy?)

- Direct democracy
- Indirect (representative) democracy; (

Justifications for democracy (why democracy?)

Instrumentalism

- Produces good laws & good policies
- Improves character of participants
- Produces growth

Non-instrumentalism

- Self-government (liberty)
- Legitimacy of government based off majority consensus
- Equality

Alternatives to democracy

- Monarchy

- Dictatorship
- Oligarchy
- Isonomia

Question: how to decide on the procedure which will lay out the procedure used to make decisions? (infinite regression).

Answer: a constitution is needed.

2.2 Constitutionalism

Technical definition of constitution: *"The institutional form and complex of the political settlement."*

Modern constitutions

- Written documents
- Establish legitimate government power (its exercise and limits)
- Provide blueprint for common good (aspirational character)

What modern constitutions are for

- Establish legitimate government power
- Regulate exercise of public power
- Provide blueprint for common good

How?

- Regulates all government (including legislature)
- Only possible if constitution is normatively superior to ordinary laws
- Hierarchy of laws (ordinary legislation cannot modify)

Content of constitutions

- **Regulates horizontal structure of government** (separation between branches, relationship between branches)
- **Regulates vertical structure of government** (relationship between different levels of government ie. Central/regional/local)

- Law-making process

- Electoral process
- Bill of rights (and duties)
- Identity/language/culture

Types of constitutions

- Written or unwritten
- Rigid or flexible (difficulty of change)
- Supreme or subordinate (to ordinary legislation)
- Federal or unitary
- Separated powers or fused powers
- Republican or monarchical
- Effective or ineffective
- Foundational or modifying (of pre-existing system)
- Procedural or also substantive
- Judicially enforced or not
- Democratic or not
- Liberal or not
- Welfare/socialist or not

Constitution vs constitutionalism

- We must decouple the doctrine of constitutionalism from the presence (or lack thereof) of a 'constitution'
- The UK has no (codified) constitution, while at the same time being widely held to be the *birthplace* of modern constitutionalism

Constitutionalism: what constitutionalism requires, at minimum, is law (lex), limited by law (ius).

Lex: law that is the product of political power
(Ex: primary legislation, secondary legislation, by-laws)

Ius: law not the product of political power
(Example: English common law, Roman/Justinian ius, codified constitutions)

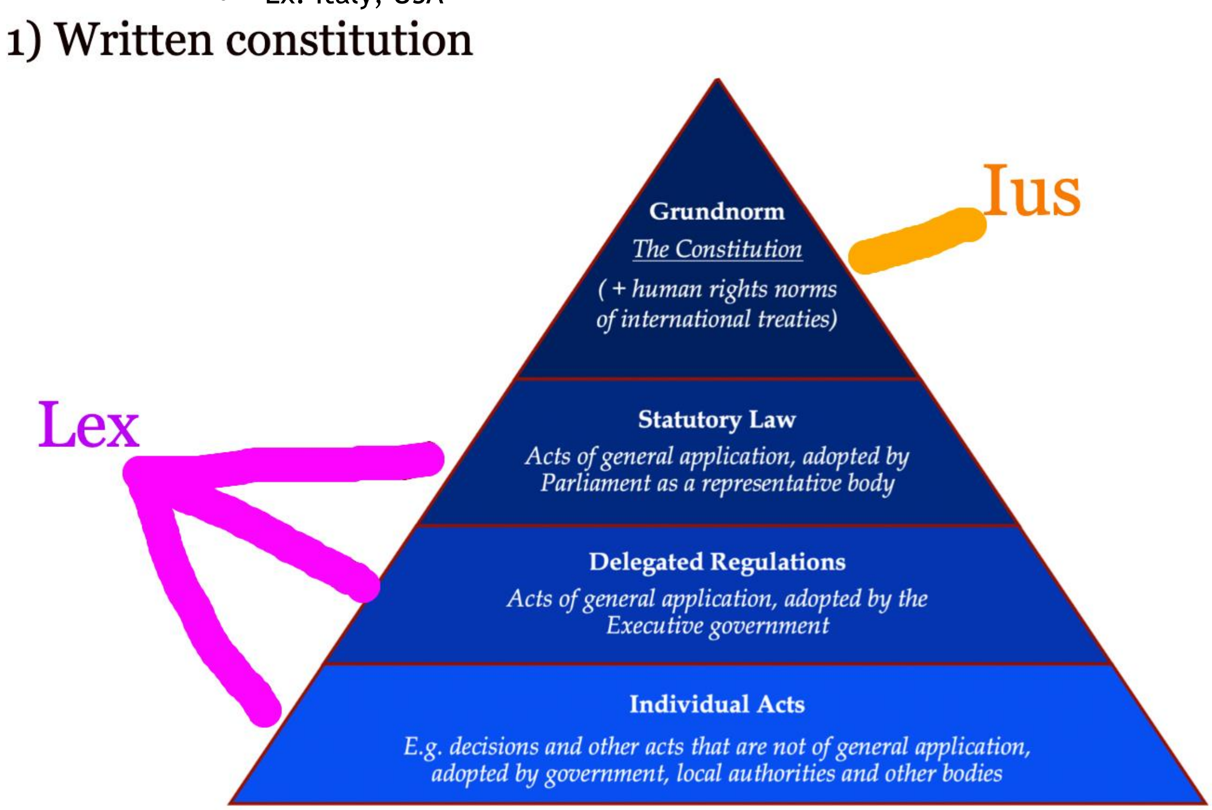
"Only with the emergence of a new type of positive law (besides law as the expression of the political authority) does it become possible to limit law *by* law."

"It is the creation and differentiation of *ius* from *lex* in Roman legal culture, together with the deployment of *ius* to limit *lex* during the crisis of the late Roman Republic, that we see the first historical attempt at what we would today call substantive constitutional thinking."

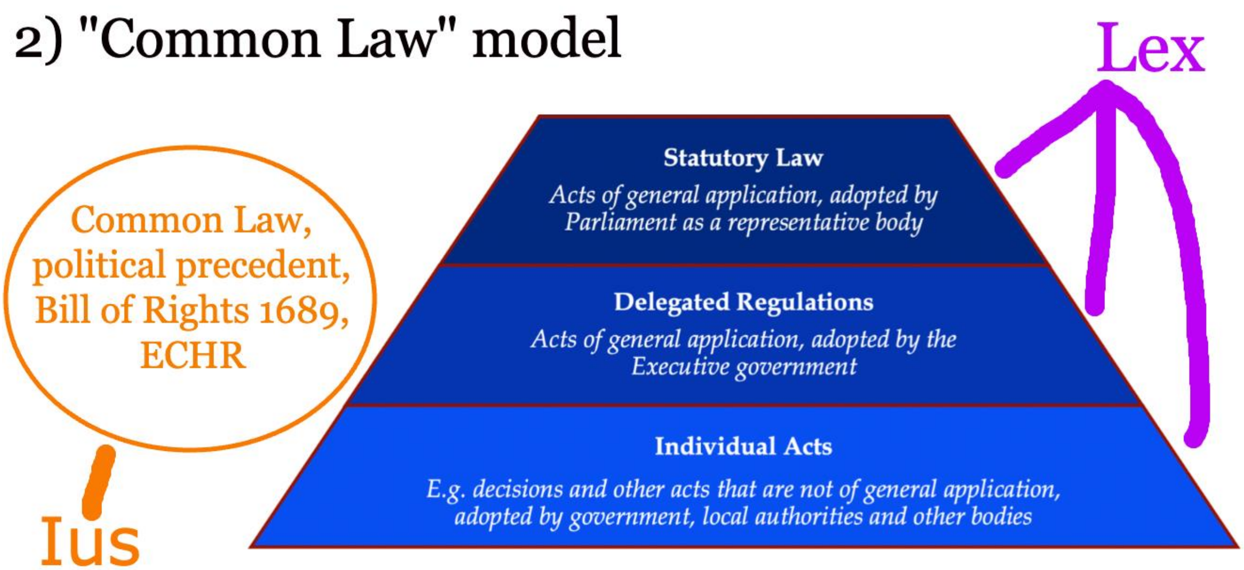
Therefore, modern constitutionalism does not necessarily rely on a written constitution which limits political power (however this is the most common model).

Instead, constitutionalism is realized whenever the exercise of political power through law is limited juridically by another type of law, in one of two ways:

1) Written constitution
    - Formally superior to legislation
    - At least in part outside of legislator's disposal
    - Ex: Italy, USA



2) Common Law model
- No written constitution
- Not formally superior to legislation
- Exists alongside ordinary legislation
- Source, administration, and foundations institutionally beyond reach of political authority
- Ex: England, Roman Republic, pre-Westphalian continental Europe



In either case, the point is that only when procedural and substantive legal constraints are placed (institutionally) upon the ordinary law-making power of the legislature can we effectively conceive of a political system as 'constitutional'.

Without these limits, a democratic regime can always be democratically *terminated*. Thus, the best way to understand the relationship between democracy and modern constitutionalism is to conceive of the former as an incomplete ideal, and the latter providing it with completeness.

Problems with traditional conception of constitutionalism

- Even though a state may have a codified constitution it may not actually be applied
- The UK, despite having a codified constitution is considered the birthplace of constitutionalism

Living constitutionalism

- Constitutions are meant to be long-lasting and provide continuity and stability
- Moral provisions in constitutions pose challenges when considering how one generation can bind the moral choices of another
- Living constitutionalism argues that constitutions can adapt to changing circumstances without losing their identity or legitimacy

Originalism

- Originalism is a theory of constitutional interpretation
- It argues that the meaning of the Constitution should be determined by its original understanding
- There are different strands of originalism, including Original Intent Originalism and Original Public Meaning Originalism

- Originalists generally believe that the Constitution's rules and principles are fixed and should not be revised
- They argue that the interpretations of the Constitution should not be based on contemporary values but on the intentions or public meanings at the time of adoption

Possible failures of constitutions

- The content of the constitution is fine, but the political reality is very different
- There are problems at the level of the content of the constitution itself (either because something is missing, or more generally because the constitution does not limit government after all)

Sovereign versus government

- Sovereignty refers to the possession of supreme normative power and authority, while government is the entity through which sovereignty is exercised
- Austin's distinction between the two highlights the need to differentiate between the ultimate source of power and the individuals or institutions that exercise that power

Challenges of strong-form constitutional review

- Judicial pronouncements replace the input of citizens and elected representatives in the creation of laws
- A small group of unelected judges hold the power to make contentious moral pronouncements
- Judges often disagree among themselves and rely on majority voting to settle disputes
- Judicial decisions may conflict with widely shared views in the community and even with judges' own previous decisions

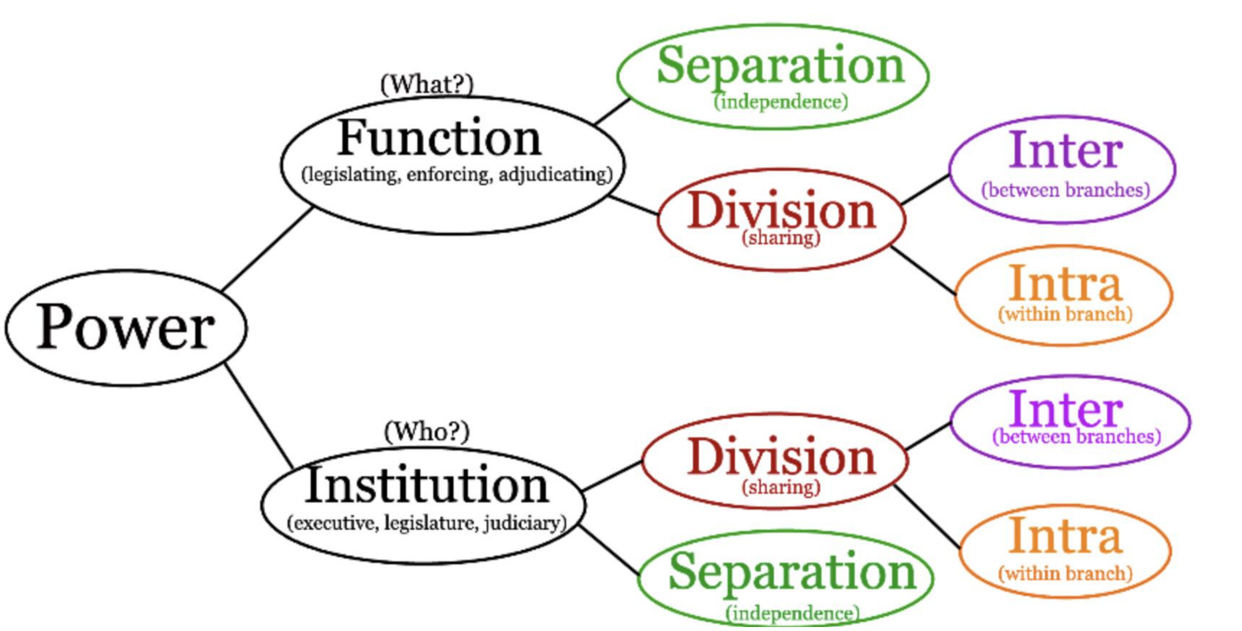
Limited Government and Unlimited Sovereignty

- Sovereignty might lie with entities other than the government
- Constitutional democracies have unlimited sovereignty of the people, but limited and subordinate government bodies
- People have the power to void government authority if it exceeds constitutional limitations

2.3 Separation & Division of Powers

Institution vs function

- Institution: legislature, executive, judicial branch
- Function: legislating, enforcing laws, adjudicating
- Institutions and functions not necessarily identical (as the executive may create new laws via secondary legislation, for example)
- Thus, legislative branch and legislative function not necessarily identical
- Separation (independence) of powers can mean separation of institution and separation of function

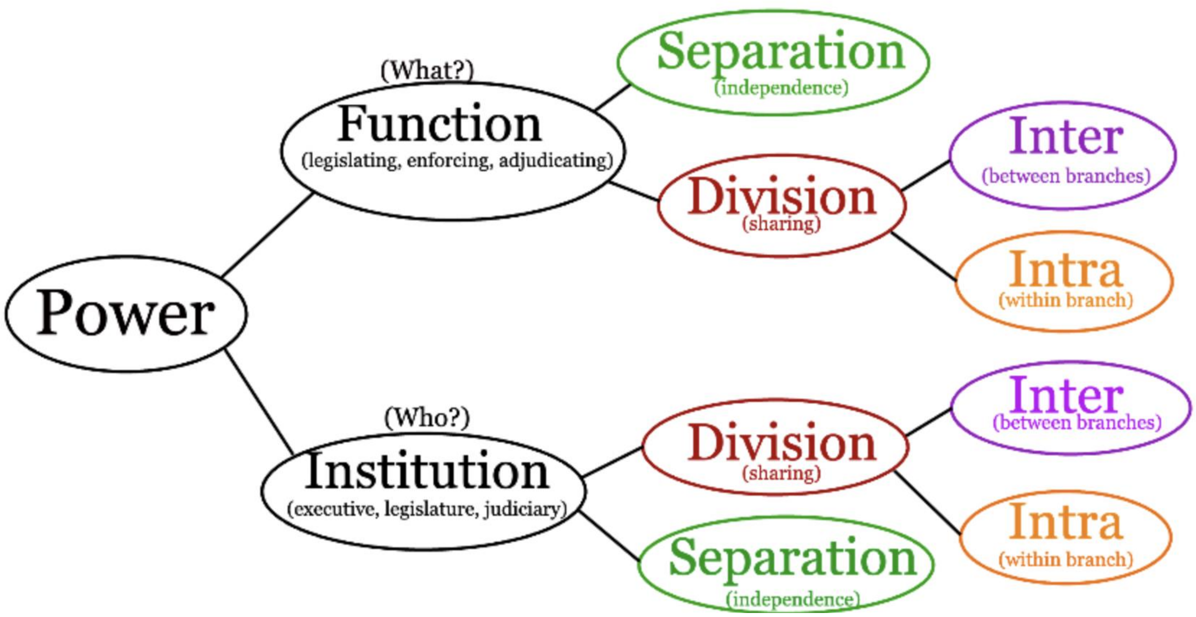


Functional division

- Participation of more than one subject in the performance of a function: distribution of the ***same*** power amongst a multiple decision-makers, (exercise of power is shared)
- (Ex: after legislature passes a bill, it must be signed by the president before it becomes law.)

Functional separation

- Decision or formal act which a certain function is expressed is the product of a process in which officials from other branches do not take part (excludes *external* functional division)
- Ex: Judicial independence – members of the other branches cannot take part in adjudicating



Institutional division

- When the body entrusted with a certain function can be appointed or removed by another official
- Within the same branch (intra-institutional division); Ex: a cabinet minister being removed by a prime minister
- From another branch (inter-institutional division); Ex: a legislative vote of no confidence dismisses the current executive cabinet

Institutional separation

- Prohibits the official or body holding a certain function to be discretionally appointed or removed by officials from other branches entrusted with different functions.
- Ex: Judges' careers (appointment, progression, dismissal, and so forth) cannot be decided by members of the executive or legislature.

Appendix

Exam questions from 2023

First partial

Q1) What is legal pluralism?

Q2) According to legal positivists, what is the connection between law and morality?

Q3) Explain the reasoning behind the court's decision in Mabo v Queensland

Second partial

Q1) Is there any tension between democracy and modern constitutionalism?

Q2) What are the possible meanings of separation of powers?

General

Q1)

Q2)

Q3)

Q4)

Q5)

Book sources for first semester

Common Law

Introduction to the Comparative Study of Private Law (by Hao Jiang & James Gordley)
Amazon: https://tinyurl.com/mrxcnzpf
PDF: https://tinyurl.com/yc7maxn2

Basic Contract Law (by Lon Fuller, Melvin Eisenberg, & Mark Gergen)
eBook: https://archive.org/details/basiccontractlaw0000full_n6c4

General Jurisprudence

General Jurisprudence: Understanding Law From A Global Perspective (by William Twining)
Amazon: https://tinyurl.com/2n59srbk
PDF: https://tinyurl.com/29598635

Legal Pluralism Explained: History, Theory, Consequences (by Brian Z. Tamanaha)
Amazon: https://tinyurl.com/24tpd8xh
PDF: https://tinyurl.com/54tpuaby

The Making of Constitutional Democracy: From Creation to Application of Law (by Paolo Sandro)
Amazon: https://tinyurl.com/9uh93afb
PDF: https://tinyurl.com/2d4yn2mc

Civil Law

Introduction to Private Law (by Pietro Sirena)
Amazon: https://tinyurl.com/337metzw
PDF: https://tinyurl.com/ye28tmyp

Contract Law: A Comparative Introduction (by Jan M. Smits)
Amazon: https://tinyurl.com/y3muuww3
PDF: https://tinyurl.com/43jby3n3

Critical Thinking

Critical Thinking: An Introduction (by Damiano Canale)
PDF: https://tinyurl.com/4mk965kk
Amazon: https://tinyurl.com/yutuwssk

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